

OGC HAS REVIEWED.

8 October 1952

MEMORANDUM FOR: The Director of Central Intelligence

SUBJECT: Refusal by Executive to Provide Information to Congress

1. The President and the heads of executive departments have on many occasions refused, for reasons of public interest, to furnish information requested by Congress or Congressional committees.
2. In no case has either House of Congress taken steps to compel compliance after the executive has refused to furnish information in response to a subpoena or a resolution of either House as there has been no effective remedy for such refusal.
3. This stems from the fundamental doctrine of the separation of powers among the three branches of Government. The Constitution lodges the executive power in the President. The authority of each head of a department is part and parcel of the executive power of the President. To coerce the head of a department is to coerce the President. It follows that Congress cannot, under the Constitution, compel heads of departments to make public what the President desires to keep secret in the public interest. The President alone is the judge of that interest and is accountable only to the country in his political character and to his own conscience. Consequently, determinations of the heads of departments in this respect obviously must be consistent with Presidential policy.
4. The executive's position is by history and precedent particularly strong where secrets of state are involved, since the conduct of foreign relations is a constitutional prerogative of the President. Further, Congress, itself, holds the Director of Central Intelligence responsible for protection of intelligence sources and methods from unauthorized disclosure.
5. Determinations to refuse testimony may be qualified by agreements with appropriate Congressional committees to limit questioning or to hold hearings in executive session. Congressional inquiries on loyalty cases are subject to special Presidential restrictions requiring reference to the White House.

LAWRENCE R. HOUSTON  
General Counsel

OGC/LRH/RGH;mb

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